



Energy Policy Act of 2005 Section 390 Categorical Exclusions

**Environmental
Protections
and Process
Improvements**

The Energy Policy Act of 2005 (the Act) created five categorical exclusions under the National Environmental Policy Act of 1969 (NEPA) for activities conducted pursuant to the Mineral Leasing Act for the purpose of exploration or development of oil or gas. These categorical exclusions are contained in Section 390 of the Act and read as follows:

1. *Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.*
2. *Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.*
3. *Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.*
4. *Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.*
5. *Maintenance of a minor activity, other than any construction or major renovation [of] a building or facility.*

These categorical exclusions eliminate the need to prepare new NEPA paperwork. They do not exclude the application of other environmental laws, regulations, environmental best management practices, endangered species consultation or mitigation, protection of sensitive wildlife species, such as sage grouse, or any other protective measures that the Bureau of Land Management (BLM) may find necessary.

BLM field staffs will continue to conduct field exams, inspections, and enforcement for every Application for Permit to Drill (APD) or right-of-way filed by the oil and gas industry. The BLM continues to conduct internal interdisciplinary reviews of these permit applications and will attach any protective conditions of approval necessary to ensure adequate protection of the environment. In short, the categorical exclusions do not authorize drilling without thorough review and application of environmental protections.



Six coalbed natural gas wells, 2 miles of two-track roads, 2 miles of pipeline, and 2 miles of buried powerlines. Can you find them?

The Bureau of Land Management:

Must conduct onsite inspections of all APDs submitted regardless of the NEPA document used.

Must conduct an internal interdisciplinary review of the pending permit(s) in the same fashion as would have been done without the Section 390 categorical exclusions.

Must consult, as applicable, with the U.S. Fish and Wildlife Service, State game and fish agencies, State historic preservation officers, and other government entities.

Must follow current land use plan decisions and mitigation requirements of previous environmental impact statements (EISs) and environmental assessments (EAs) so as to provide the same level of environmental protection regardless of the type of NEPA documentation used.

Must consider and apply appropriate environmental best management practices.

Must document determinations that Section 390 categorical exclusions apply.

The Section 390 Categorical Exclusions:

Do reduce the redundant paperwork associated with conducting repetitive NEPA analyses for individual APDs.

Do require that previous NEPA analysis was completed for the area affected prior to use of the categorical exclusions (with few exceptions). This may be in any form, from a land use plan EIS to an individual or group of EAs that are less than 5 years old and have analyzed the reasonable foreseeable cumulative impacts of these types of actions.

Do provide some time savings for affected BLM staff to do other priority work such as inspection and monitoring.

Do not exclude in any way the BLM’s obligation under any other statute or regulation, such as those protecting wildlife, water resources, cultural resources, and air quality. These requirements remain unchanged by use of the categorical exclusions.

Do not “waive” wildlife restrictions identified by current BLM land use plans or recommended by State game and fish agencies.



Revegetated two-track access road in Powder River Basin with submersible pump, telemetry, and all utilities and gathering lines buried in the road.



Reduced impact drilling with winding two-track access road and brush-bladed well location.

Bureau of Land Management Policy and Procedure:

Washington Office Instruction Memorandum No. 2005-247 issued on September 30, 2005, and extended to September 30, 2007, provided detailed instructions to BLM Field Offices on the use of Section 390 categorical exclusions including:

“Field Offices shall maintain a structured, multi- or interdisciplinary permit review and approval process, conduct onsite exams for 100 percent of proposed well and road locations, and shall apply appropriate mitigation and BMPs to all permitted actions, in accordance with existing land use plans, full field development EIS, and other pertinent NEPA documents, even when actions are approved through the use of Section 390 CXs.”

“Field Offices must apply the same or better mitigating measures considered in the parent NEPA documents to all actions approved under any CX. Additionally, BMPs are to be applied as necessary to reduce impacts to any authorization issued, regardless of the NEPA analysis or exclusion used.”

The BLM has other related instructions that apply to APDs and environmental protection requirements including:

- WO IM 2007-021 “Integration of Best Management Practices into Application for Permit to Drill Approvals and Associated Rights-of-Way”
- BLM Gold Book and environmental Best Management Practices at: www.blm.gov/bmp